IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 3 OF 2007

MS. LIDA JOAO ....Petitioner

Versus

MRS. KANCHAN CHODANKAR CONSTABLE ATTACHED TO MAPUSA POLICE STATION AND 2 ORS. ....Respondents

Mr. V. A. Lawande, Advocate for the Petitioner.
Mr. A. F. Diniz, Advocate for Respondent nos. 1 & 2.
Ms. Winnie Coutinho, P.P.for the State.

Coram:- N. A. BRITTO, J.

Date:- 1st March, 2007

ORDER

Heard learned Counsel on behalf of the petitioner/Complainant and Respondent nos. 1 and 2/accused.

2. This petition can be treated as filed under Section 482 of the Code of Criminal Procedure, 1973, against Order dated 17.01.2007 of the learned Sessions Judge, upholding the Order dated 24.02.2006 of the learned J.M.F.C.

3. The Complainant is seeking recall of Complainant's witness Samiro Pereira for correction of the date as stated by him from 2.7.04 to 2.7.02. The evidence of the said Complainant's witness Samiro Pereira was recorded on 22.07.05 and the date of his having gone to the Police Station was stated by him as 2.7.04 or may be 4.7.04. It is only the year which is now sought to be corrected from "04" to "02".

4. The complainant's witness was not re-examined nor any application was filed for correction of the said date on the same date but

such an application came to be filed on the very next date i.e. on 30.07.2005, purporting it to be an application filed under Section 311 of the Code of Criminal Procedure, 1973.

5. In the said application, the Complainant had stated that the said date was wrongly typed as "04" and it ought to have been typed as "02". The Complainant also pleaded that the said witness had prayed for making a correction to that effect and was reluctant to put his signature for sometime but subsequently he signed the same and told the Complainant about the same and, therefore, there was a mistake apparent on the face of the record, which required clarification/correction through the mouth of the same witness. On behalf of the accused, a reply was filed and it was stated that typing of the figure “04” could not be a typing mistake at two places due to the dictation by the Court. It was further stated that the Complainant by recalling the witness, wanted to correct a mistake which would cause irreparable prejudice to the accused. However, what was not contested on behalf of the accused is that the Complainant's witness was reluctant to put his signature for sometime but had signed the deposition subsequently inspite of the said reluctance.

6. On behalf of the Complainant, it is submitted that the said reluctance is evident from the fact that the Complainant signed the deposition first and then cancelled his signature but upon insistance, signed the same again. The learned trial Court came to the conclusion that the year “04” was stated not at one place but at two places i.e. as 2.7.04 or may be as 4.7.04, and therefore, the witness was not certain as to the date and therefore later on the witness could not by an application state the date as “02” and not “04” and, as such, there was no scope for correction.

7. The Complainant having filed an application for revision, the same came to be dismissed by the learned Sessions Judge.

8. However, it is interesting to note that along with the revision

application, Complainant's witness, the said Samiro Pereira, had filed an affidavit stating that the year was wrongly typed as “04” though he had stated as “02”. The said witness had also stated in the said affidavit that after the deposition was recorded, he had read over the deposition and had pointed out to the Hon'ble Judge that the deposition was not correctly recorded/typed. Certainly, in case such an affidavit was filed before the trial Court, it would have facilitated the trial Court to put an end to the controversy, rightly, but that was not to be. It may also be noted that earlier at the stage when the statement on oath was recorded of the said witness, the said witness had referred to 9.7.02 as the date he came to know the Complainant.

9. The affidavit produced on behalf of the Complainant clearly disclosed that the Complainant's witness had immediately reacted to the typing of a wrong year i.e. “04” instead of “02”. In case there was such a mistake and the same was objected to by the accused, the same could have been corrected only by recalling and re-examining the said Complainant's witness in terms of Section 311 of the Code, and, there was no question of any prejudice being caused to the accused as the accused can have an opportunity to cross examine the said witness when recalled. The facts stated on behalf of Complainant and not disputed on behalf of accused do not even remotely suggest that the Complainant's witness wishes to be recalled to correct the said mistake on being tutored by the Complainant, as contended on behalf of the accused. The provision of Section 311 of the Code is meant to do justice between the parties. Since the Complainant's witness himself had reacted at the earliest opportunity and shown his reluctance to sign his deposition, which is evident from the copy of the deposition produced and since the Complainant had applied to get the said mistake corrected at the earliest available opportunity, the learned trial Court ought to have allowed the recall of the said witness for the purpose of correction of the said mistake or typographical error.

10. The ratio in Mir Mohd. Omar & Ors. v. State of West Bengal (AIR 1989 S.C. 1785) would be in applicable to the facts of the case at

hand. That was a case where the witness was sought to be recalled after the accused was examined under Section 313 of the Code and the Order for recall was made after ordering the deletion of the statement recorded under Section 313, whereas in the case at hand, the Complainant's witness himself had reacted to the said typographical mistake immediately and so had the Complainant at the first available opportunity and the said witness had even filed an affidavit subsequently. The learned Trial Court ought to have allowed the application filed by the Complainant to recall and re-examine the Complainant's witness, the said Samiro Pereira, for correction of the said typographical error since it was otherwise objected to on behalf of the accused.

11. Consequently, this petition succeeds. The Orders of both the Courts below are hereby set aside. The application dated 30.07.2005, shall stand allowed, in the light of what has been stated in Para 3 hereinabove.

N. A. BRITTO, J.

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